WP(C) 4370/2007
BEFORE
HON'BLR MR JUSTICE AMITAVA ROY

Heard Mr S. Dhar Choudhury, learned counsel for the petitioner. Also heard Mr R K Bora, learned State counsel for the official respondents.

The petitioner is aggrieved by the order dated 17.8.2007 whereby his transfer as Accountant , South Salmara Development Block under DRDA, Dhubri to Srijangram Development Block under DRDA, Bongaigaon vice the respondent No.5, Paritosh Chandra Sarkar had been cancelled.

Pursuant to the order dated 24.08.2007, the learned State counsel has produced the records pertaining to the transfer of the parties. In view of the revelations therefrom, I do not consider it necessary to issue notice to the respondent No.5.

The pleaded facts reveal that the petitioner had been transferred as Accountant, South Salmara Development Block by order dated 23.2.2006 and in compliance thereof, he joined the said Block. By order dated 22.6.2007 of the Director, Panchayat and Rural Development, Assam, he was transferred in the sama capacity to Srijangram Development Block under DRDA, Bongaigaon. The respondent No.5 was posted in his place at South Salmara Development Block, DRDA, Dhubri. According to the petitioner, in compliance of the said order of transfer, he joined the Srijangram Development Block on

10.7.2007 and has been continuing there as such till date. It was at that stage by the impugned order dated 17.8.2007 also by the Director, Panchayat and Rural Development, Assam, his transfer to Srijangram Development Block was cancelled.

This Court pending scrutiny of the relevant records by order dated 24.8.2007 permitted the petitioner to continue at Srijangram Development Block. According to the petitioner, the impugned order has been passed on extraneous considerations and on political intervention to accommodate the respondent No.5.

The records produced by the learned State counsel pertaining to the Directorate of Panchayat of Rural Development and bearing No.DRD-2/(Acctt)92/85 and DRD-2(Acctt)89/85 reveal that the petitioner's transfer from South Salmara Development Block to Srijangram Development Block had been effected as desired by the departmental Minister and directly in terms of his recommendations to the Director, Panchayat and Rural Development contained in his communication No.M/P&RD/TPT/10/2006/Pt dated 18.5.2007. The recommendation was implemented, though the petitioner had not by then completed three years his place of posting at South Salmara Development Block. The impugned order of cancellation also is a direct fall out of the instructions to the said effect by the same authority i.e. departmental Minister conveyed by his communications

No.M/P & RD/TDT/10/2006/Pt/143 dated 10.7.2007 and M/P&RD/TDT/10/200/Pt dated 3.8.2007.

A perusal of the records do not reveal that the order of transfer and the cancellation thereof are backed by public interest or administrative exigency. Rather, the same had been prompted by the mere desire of the departmental Minister. As a matter of fact, on receipt of the communication dated 10.7.2007, it was pointed out to the said authority by the departmental staff that meanwhile, pursuant to the order dated 22.6.2007, the petitioner had joined at Srijangram Development Block. Implementation of the direction to cancel the order dated 22.6.2007 was still insisted upon. While it is true, that the departmental Minister within his authority may make recommendations with regard to the place of posting of an officer in the same department, an order of transfer being administrative in nature has to be essentially addressed by considerations of public interest or administrative exigency and cannot be the yield of an ipse dixit

of any authority howsoever high he be in the hierarchy. In the instant case, neither the order of transfer dated 22.6.2007 nor the cancellation thereof being in consonance with the above fundamental precepts of valid state action cannot receive judicial approval.

In the above view of the matter, both the orders are set aside. In passing this order, this Court is mindful of the fact that the order dated 22.6.2007 is not in challenge. However, as an administrative authority cannot be

permitted to exercise his powers unbridled and unfettered lest its decision degenerates into arbitrariness mutilating the constitutional guarantee of fairness and nonarbitrariness in state action, interference therewith is also warranted in the facts and circumstances of the case.

In the result, the matter stands remitted to the Commissioner & Secretary to the Govt.of Assam, Panchayat & Rural Development Department, Dispur with a direction to take immediate steps for reconsideration of the necessity of transfer and posting of the officers involved strictly on the touchstone of the administrative exigency and public interest. An appropriate decision in this regard would be taken within a fortnight. As both the orders are vitiated by the vice of apparent non transparency in administrative action and disregard to the legally recognizable essentials of a valid transfer of a government employee, it is provided that for this period of two weeks, the petitioner will be permitted to serve at Srijangram Development Block under DRDA, Bongaigaon.

The petition stands disposed in the above terms. No costs.